

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TROY D. WILSON</b>	)	
Claimant	)	
VS.	)	
	)	
<b>WILLIAM WELCH d/b/a THE WELCH CO.</b>	)	
<b>JIM HOERL CONSTRUCTION</b>	)	
Respondents	)	
	)	Docket No. 251,668
AND	)	
	)	
<b>STATE FARM FIRE &amp; CASUALTY COMPANY</b>	)	
<b>ONE BEACON INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

One Beacon Insurance Company appeals from an Order entered by Administrative Law Judge (ALJ) Steven J. Howard on March 20, 2003. The Appeals Board (Board) heard oral arguments on September 17, 2003.

**APPEARANCES**

Michael R. Kauphusman of Overland Park, Kansas, appeared on behalf of One Beacon Insurance Company. Mitchell L. Burgess of Kansas City, Missouri, appeared on behalf of William Welch, d/b/a The Welch Company. Rex W. Henoch of Lenexa, Kansas, appeared on behalf of Jim Hoerl Construction Company and State Farm Fire and Casualty Company. There were no other appearances.

**ISSUES**

This case is before the Board on an insurance coverage dispute. One Beacon contends the ALJ erred and exceeded his jurisdiction in finding that he had jurisdiction to determine the insurance coverage issue. Also at issue is whether the Board has

jurisdiction of this appeal, that is, whether this appeal is from a final order, or if the ALJ's Order is otherwise reviewable by the Board at this stage of the proceedings.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Troy Wilson sustained a work-related injury on October 14, 1999 arising out of his employment with The Welch Company, a contractor for the principal Jim Hoerl Construction. Hoerl's insurance carrier, State Farm, paid benefits on Mr. Wilson's claim totaling \$49,056.50. Hoerl and State Farm filed a motion for indemnification from The Welch Company and in an Order dated October 29, 2002 indemnification was granted. The Welch Company in turn filed a motion seeking indemnification against their insurance carrier, One Beacon. One Beacon, however, claims there was no insurance coverage for The Welch Company at the time of Mr. Wilson's injury. At the hearing on the motion for indemnification, the main issue addressed was whether or not the ALJ had jurisdiction to determine the insurance coverage issue. The ALJ issued an Order on March 20, 2003, finding that the Kansas Division of Workers Compensation has jurisdiction. One Beacon appeals from that Order.

After reviewing the record and considering the arguments made by the parties, the Board finds and concludes that the ALJ's Order is interlocutory and, therefore, the Board is without jurisdiction to review the ALJ's Order at this stage of the proceedings. The Board's jurisdiction is limited to review of final orders except for appeals from a preliminary hearing. This is not an appeal from a preliminary hearing. Accordingly, the Board does not have jurisdiction unless the order is a final award or order.<sup>1</sup>

K.S.A. 44-551(b)(1) grants the Board jurisdiction to review the following:

All **final** orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. [Emphasis added.]

The limitation to "final" orders was not in the original, 1993, version of K.S.A. 44-551. That term was added in 1997 after the Court of Appeals had ruled that the Board's jurisdiction was not limited to review of final orders or awards and included the right to review such orders as an appointment of a neutral physician.<sup>2</sup> We find no subsequent appellate decision which defines "final" order in this specific context of this Board's review. The term "final" is, of course, defined as it relates to review by the Court of Appeals and this is a logical source for a definition.

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<sup>1</sup> See K.S.A. 44-534a(a); K.S.A. 44-551(b).

<sup>2</sup> *Winters v. GNB Battery Technologies*, 23 Kan. App. 2d 92, 927 P.2d 512 (1996).

Generally, a decision or order is final only when it resolves all issues between the parties and reserves no further question for future action. But the Court of Appeals has also recognized an exception to this general rule in certain cases where there is no other effective means to review the decision. The Court states three criteria which also make an interlocutory order reviewable as a final order. The order may be final even if it does not resolve all issues between the parties if the order (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment.<sup>3</sup>

In our view the current Order fails to satisfy these three criteria. The Order determines, but not conclusively, that the Division of Workers Compensation has jurisdiction to determine the insurance coverage issue. The Order is completely separate from the merits of the action, but it is effectively reviewable on appeal after the final award determination by the ALJ.

The Court of Appeals has held that sanctions for failure to comply with discovery does not satisfy these three criteria because an order for sanctions is subject to effective review on appeal.<sup>4</sup> In fact, most orders can be effectively reviewed. Orders such as that in the *Winters* case, an order for appointment of a neutral physician, decisions regarding terminal dates, admission of evidence, and most other orders can be effectively reviewed in the sense that there remains a remedy. There are no interests in this case that require protection such as confidential information not relating to the workers compensation proceeding, where once the information is disclosed, there is no remedy.

Because the Board does not have jurisdiction to consider this appeal, the Board does not reach the merits of the ALJ's jurisdiction to determine the insurance coverage dispute.

### **Award**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this appeal should be and is hereby dismissed.

**IT IS SO ORDERED.**

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<sup>3</sup> *Skahan v. Powell*, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982).

<sup>4</sup> *Reed v. Hess*, 239 Kan. 46, 716 P.2d 555 (1986).

Dated this \_\_\_\_ day of November 2003.

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BOARD MEMBER

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BOARD MEMBER

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c: Kathleen J. Cossairt, Attorney for Claimant  
Rex W. Henoch, Attorney for Jim Hoerl Const & State Farm Fire & Casualty  
Mitchell L. Burgess, Attorney for William Welch d/b/a The Welch Company  
Michael R. Kauphusman, Attorney for One Beacon Insurance Company  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director